

03/28/2006 09:57 9146941800

JONATHAN P ARFA PC

U.S. DISTRICT COURT  
FILED 06/13UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SUZANNE HAMILTON, TAMMY O'RILEY,  
and MORRIS CARR Individually and  
on Behalf of All other persons similarly situated,

Plaintiffs,

-against-

UNLIMITED CARE, INC.

Defendant.

Index No.: 06CV706  
(SCR)

X

**STIPULATION AND ORDER STAYING ACTION**

Plaintiffs, who have filed suit herein as "SUZANNE HAMILTON, TAMMY O'RILEY, and MORRIS CARR", Individually and on Behalf of All other persons similarly situated", and Defendant, "UNLIMITED CARE, INC." by and through their undersigned counsel, who are duly authorized, hereby enter into this STIPULATION, and agree as follows:

WHEREAS Plaintiffs filed a Complaint, alleging they and similarly situated employees are owed overtime and other wages under the Federal Fair Labor Standards Act and the New York Labor Law;

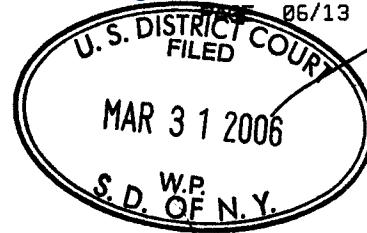
WHEREAS the United States Court of Appeals for the Second Circuit held that 29 C.F.R. §552.109(a) is unenforceable in a decision entitled *Coke v. Long Island Care at Home*, 376 F 3d 118 (2d Cir. 2004), but the United States Supreme Court vacated and remanded the judgment of the Second Circuit on January 23, 2006; and

WHEREAS the decision of the Court of Appeals for the Second Circuit on remand may be dispositive of and may require dismissal of the claims presented herein by Plaintiffs,

**IT IS HEREBY STIPULATED AND AGREED THAT:**

1. This action is stayed pending final decision, after exhaustion of appeals, by any, of the United States Court of Appeals for the Second Circuit in the case entitled *Coke v. Long Island Care at Home*, Docket No. 03-7666 on remand (the "Final Determination").

2. Within thirty days from the Final Determination in the case entitled *Coke v. Long Island Care at Home*, Docket No. 03-7666, the parties will submit a stipulation of discontinuance or Defendant will file a response to the Complaint.



MAR 31 2006

MICROFILM  
USDC SD NY WP

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: \_\_\_\_\_  
DATE FILED: \_\_\_\_\_

3. From the date of execution of the STIPULATION to and until the date of the Second Circuit's decision in *Coke v. Long Island Care at Home*, Docket No. 03-7666, Defendant agrees that the statute of limitation applicable under the New York Labor Law is tolled as to non-exempt employees paid on an hourly basis performing duties as a home health aide (regardless of how such position may be referred to or titled).

LOCKS LAW FIRM, PLLC  
*Attorneys for Plaintiffs*  
 110 East 55<sup>th</sup> Street, 12<sup>th</sup> Floor  
 New York, New York 10022  
 (212) 838-3333

By: F Rudich  
 Fran L. Rudich (FR 7577)  
 Seth R. Lesser (SL 5560)

Dated: 3/28/06

Jonathan P. Arfa, P.C. Attorney at Law  
*Attorney for Defendant*  
 4 Gannett Drive  
 White Plains, New York 10604  
 (914) 694-1000

By: J Arfa  
 Jonathan P. Arfa (JA3611)

Dated: 3/28/06

BERGER & GOTTLIEB  
*Attorneys for Plaintiff*  
 150 East 18<sup>th</sup> Street Suite PHR  
 New York, New York 10003  
 (212) 228-9795

By: J Gottlieb  
 Jeffrey M. Gottlieb (JG 7905)

Dated: 3/28/06

SO ORDERED:

✓ This 30<sup>th</sup> day of March, 2006

Stephen C. Robinson  
 Hon. Stephen C. Robinson, U.S.D.J.